

ENTERED

March 17, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DONALD HUGHES, §
§
Plaintiff, §
§
VS. § CIVIL ACTION NO. H-17-173
§
UNITED PROPERTY & CASUALTY §
INSURANCE COMPANY, *et al.* §
§
Defendants. §

REMAND ORDER

United Property & Casualty Insurance Company filed a notice of removal of this insurance dispute on January 19, 2017, based on federal diversity jurisdiction. United alleged the improper joinder of Rockland Insurance Agency, the nondiverse insurance sales agency defendant whose presence in the case, if proper, would defeat federal diversity jurisdiction.

The test for improper joinder is whether the defendant has demonstrated that “there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant.” *Smallwood v. Ill. Cent. R.R. Co.*, 385 F.3d 568, 573 (5th Cir. 2004) (en banc). To resolve this issue, a court “may conduct a Rule 12(b)(6)-type analysis” and must “apply the federal pleading standard embodied in that analysis.” *Int'l Energy Ventures Mgmt., L.L.C. v. United Energy Grp., Ltd.*, 818 F. 3d 193, 207-208 (5th Cir. 2016).

United has not made the necessary demonstration, for the reasons stated in detail on the record at the Rule 16 initial conference hearing on March 17, 2017, after counsel presented arguments on the motion. (Docket Entry No. 11). As explained on the record, Mr. Hughes’s petition sufficiently alleged specific conduct by Rockland, the nondiverse insurance agency, to

support a plausible inference of Mr. Hughes's right to recover against it under the asserted Texas insurance causes of action, and of a reasonable possibility of recovery under these causes of action. United has not otherwise established a basis for federal jurisdiction, making remand proper. *See Boone v. Citigroup, Inc.*, 416 F.3d 382, 388 (5th Cir. 2005); *Sanders v. Sentry Ins. A Mut. Co.*, Civil No. 16-164, Docket Entry No. 8 (N.D. Tex. Aug. 23, 2016).

This case is remanded to the 434th Judicial District Court of Ford Bend County, Texas.

SIGNED on March 17, 2017, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge